

# Oracle Terms of Service for DataFox Services

PLEASE READ THESE TERMS OF SERVICE CAREFULLY. BY ACCESSING ANY PAGE OF THE DATAFOX SERVICES WEBSITE (THIS “**SITE**”) OR USING ANY DATAFOX SERVICE (COLLECTIVELY, THE “**SERVICE**”), YOU (“**CLIENT**”) AGREE TO BE BOUND BY THESE TERMS OF SERVICE AND ALL OTHER TERMS INCORPORATED BY REFERENCE.

LAST UPDATED: May 29, 2019

## 1. DATAFOX SERVICE

- a. Subject to these Terms of Service, Oracle will provide to Client the Service as described in the Client’s order (“**Order**”). These Terms of Service govern any free trial period as well as the paid term of any Order. Only Client and Authorized Users (as defined below) may use the Service. Client shall designate as “**Authorized Users**” Client’s employees, consultants, contractors and subcontractors needing to access and use the Service for Client’s internal business purposes, up to the number of Authorized Users specified in Client’s Order (if such number is specified). Client and each of its Authorized Users are subject to these Terms of Service. Client is responsible for the compliance with these Terms of Service by its Authorized Users, and Client is responsible for any breach of these Terms of Service by its Authorized Users or any other Client personnel. Where the context requires, requirements and prohibitions in these Terms of Service shall apply to both Client and Authorized Users, even if expressed as a Client requirement or prohibition.
- b. Please read our [Privacy Policy](#) carefully for details relating to what information and data we collect and how we use such data. Except for information necessary for the creation of Authorized User accounts, Client will not provide any personally identifiable or personal information (as defined by applicable law) to Oracle under this Agreement and will promptly notify Oracle if Client discovers it has done so. Any personal information provided for the creation of Authorized User accounts will be governed by our Privacy Policy, which is incorporated into these Terms of Service by reference.
- c. Oracle will use commercially reasonable efforts to make this Site and the Service available to Client. Client acknowledges and agrees that such availability is subject to: (a) planned maintenance downtime, and (b) any unavailability caused by urgent maintenance or circumstances beyond Oracle’s control. Oracle will use commercially reasonable efforts to provide Client support.
- d. Client acknowledges and agrees that Oracle uses third party vendors and hosting partners to provide the necessary hardware, software, networking, storage, and related technology required to run the Service, and that the technical processing and transmission of the Service involve encrypted transmissions.
- e. Oracle reserves the right at any time to modify, augment, enhance or discontinue, temporarily or permanently, the Service (or any part thereof) (each, a “**Service Change**”), provided that in each instance Oracle is making such Service Change for its customers generally. Use of any new Service features, tools and resources are subject to these Terms of Service. Should Oracle discontinue or materially degrade any material feature of

the Service, Oracle will promptly provide notice to Client and (a) Oracle will provide Client with an appropriate price adjustment, or (b) Client may terminate this Agreement by giving written notice to Oracle and paying any Service fees due (prorated through the date of termination) and Oracle will provide a prorated refund of any prepaid Service fees.

- f. Oracle reserves the right to change or modify these Terms of Service from time to time. If such change or modification materially reduces Client's rights, Client may terminate this Agreement by giving written notice to Oracle and paying any Service fees due (prorated through the date of termination), and Oracle will provide a prorated refund of any prepaid Service fees. Any change or modification will be effective upon posting on this Site. Client shall regularly review these Terms of Service to ensure compliance with the most recent terms. Client's continued use of the Service following the posting of any change or modification of the Terms of Service will constitute Client's acceptance of such change or modification. If Client does not agree to the amended Terms of Service, Client must stop accessing and using the Service immediately.
- g. Oracle represents and warrants that Oracle has acquired from its partners all necessary rights to include in the Service the DataFox Content provided by such partners. Oracle will provide the Service in accordance with all applicable laws, rules and regulations.

## 2. CLIENT AND AUTHORIZED USER RESPONSIBILITIES

- a. Authorized Users must be human beings (persons). Authorized Users must provide their correct legal full name, a valid email address, and any other information requested in order to complete the registration process.
- b. Each Authorized User account may only be used by one person. If Oracle determines that account sharing has occurred, Oracle reserves the right to charge Client for each individual using the Authorized User account. If account sharing continues after Oracle gives Client written notice of account sharing with regard to one or more specified Authorized User accounts, Oracle may terminate Client's access to the Service under the terms of Section 9(b) below.
- c. Client and Authorized Users are responsible for maintaining the security of Client's account and password. Oracle is not liable for any loss or damage resulting from Client's or Authorized User's failure to protect Client's account or comply with Client's or Authorized Users' obligations under these Terms of Service.
- d. Client may use the Services for a 30-day trial period by registering for a trial account on the Site. Repeat trial account signups are not allowed. Oracle reserves the right to cancel any trial accounts at any time, with or without cause. Services provided during a trial period are provided "as is" and without warranty, and Oracle does not provide support for such Services.
- e. Subject to Client's compliance with these Terms of Service, Oracle grants Client (i) a limited, non-assignable (except as provided in these Terms of Service), revocable right to access and use the Service for Client's internal business use only, and (ii) a limited, non-exclusive, revocable, non-sublicensable license to download, print and use DataFox Content for internal business use only. "**DataFox Content**" is part of the Service and means data records of companies, the format and presentation of such data, and any other text, charts, graphics, commentary, derived insights and other information created and made available to Client by Oracle as part of the Service.
- f. Client and Authorized Users are not permitted to: (i) reproduce, duplicate, copy, sell, resell, lease or distribute the Service, including DataFox Content, in whole or in part, to or on behalf of any third party; (ii) publicly perform or display the Service, including DataFox Content, in whole or in part; (iii) modify or make any derivative uses of the Service, including DataFox Content, in whole or in part; (iv) use any manual or automated data mining, scraping, crawling, spiders, robots or similar data gathering or extraction methods on any webpage, screen or other content contained in, generated by or relating to the Service; (v) introduce or transmit any worms, viruses, malware or any code of a destructive nature onto or via the Service; (vi) download (other than the page caching)

any portion of the Service or DataFox Content, except as expressly permitted by these Terms of Service or the functionality of the Service; (vii) use the Service, including DataFox Content, except as expressly permitted by these Terms of Service; (viii) access or use the Service for monitoring the Service's availability, performance or functionality, or for any other benchmarking or competitive purposes; or (ix) conduct any activity using the Service, including DataFox Content, that is in violation of any applicable laws and regulations, including, without limitation, all national, state, local and other laws and regulations (collectively, "**Client Prohibitions**"). Uses expressly permitted by these Terms of Service include but are not limited to downloading into spreadsheets for internal business analytical uses, and uploading into Client's CRM system for internal business purposes.

- g. Unless explicitly stated herein, nothing in these Terms of Service will be construed as conferring any license to intellectual property rights, whether by estoppel, implication or otherwise.
- h. Client shall indemnify, defend and hold Oracle and its employees, managers, officers, and agents (collectively, the "**Indemnitees**") harmless from and against any claim, demand, suit or proceeding made or brought against an Indemnatee by a third party (i) arising out of Client's or Authorized Users' use of the Service, including DataFox Content, in violation of these Terms of Service or of applicable laws, rules, or regulations, or (ii) alleging that any Client Content, Client Contributions, or Client's or Authorized Users' unauthorized use of the Service infringes or misappropriates the intellectual property rights, or violates the privacy or other rights, of a third party. Client shall indemnify the Indemnitees from and against any related damages, losses, liabilities, expenses, attorney fees and costs.
- i. Client's Order may limit the number of company profile synchronizations (aka lead exports) per month to Client's CRM or the number of results views in list form. Client does not have the right to carry forward, or obtain credit for, or provide to others, any unused lead exports or result views in any month. If Client requires access to more data than allowed under Client's Order, Client may contact Oracle to order additional Services. In no event shall Client or an Authorized User provide any leads or information (or any information in or extracted from or derived from any leads) to any third party (other than Client's CRM system), even if Client or Authorized User has exported and stored such leads or information in or to another platform.

### 3. THIRD PARTY CONTENT AND APPS

- a. Client understands that the Service gathers, organizes and derives insights on companies based on available information and data provided by third parties or contributed by clients (together, "**Third Party Content**"). Oracle does not pre-screen Third Party Content that may be presented or available through the Service. Oracle has the right in its sole discretion to limit, restrict or remove any Third Party Content from the Service. Oracle makes no claim or representation regarding, and accepts no responsibility for, the quality, content, nature or reliability of any Third Party Content. Oracle does not represent or warrant the accuracy of any Third Party Content, undertakes no responsibility to update or review any Third Party Content, and makes no guarantee as to the accuracy, timeliness or completeness of any Third Party Content. Providing Third Party Content or attribution to the source of any Third Party Content does not imply affiliation, endorsement or adoption by Oracle of the Third Party Content or Third Party Content provider. In the event that a Third Party Content provider requires Oracle to remove or discontinue use of any Third Party Content, Oracle may in turn direct Client to cease using such Third Party Content and expunge it from Client's platforms. Client agrees to comply promptly with any such direction. Third parties from whom DataFox licenses (or acquires via subscription) Third Party Content (including but not limited to Zoom Information Inc.) shall be third party beneficiaries to, and have the right to enforce the provisions of, these Terms of Service as it relates to their Third Party Content.

- b. Third party applications or services ("**Third Party Apps**") may be available through the Service. Oracle does not warrant, and is not responsible for the legality, quality, accuracy, integrity, fitness, reliability, or availability of any Third Party Apps that Client may connect to through or with the Service, or any descriptions or promises related to such Third Party Apps. Client's agreement to use such Third Party Apps will be solely between Client and such Third Party App provider.
  - c. If Client installs or enables Third Party Apps for use with the Service, or accesses the Service from the Third Party Apps, Client acknowledges and agrees that: (i) Oracle may allow such Third Party Apps providers to access Client's data for provisioning or interoperation of the Third Party Apps with the Service; (ii) Client is solely responsible for ensuring that it has obtained all necessary rights, licenses and authorizations from the Third Party App provider; and (iii) Oracle will not be responsible for any disclosure, modification or deletion of Client's data by a Third Party App provider. If Client obtains any custom data via Third Party Apps through the Service, Client is responsible for obtaining all necessary rights, licenses and authorizations to use such custom data, and to authorize Oracle to host, transmit and display such custom data. If Client does not want to permit the exchange of Client's data or account information with Third Party Apps, Client should not enable or should disable such Third Party Apps for use with the Service.
  - d. The Service may provide links to third-party websites ("**Third Party Sites**") where Client may obtain Third Party Content. Oracle makes no claim or representation regarding, and accepts no responsibility for, the quality, content, nature or reliability of any Third Party Sites, or Third Party Sites linking to the Service. Such Third Party Sites are not under the control of Oracle and Oracle is not responsible for any Third Party Site, any content, links or services on such Third Party Site, or any review, changes or updates to a Third Party Site. Oracle provides links to Third Party Sites to Client only as a convenience, and the inclusion of any link does not imply affiliation, endorsement or adoption by Oracle of any Third Party Site. When Client leaves this Site, Client understands and agrees that the terms and policies of the provider of the Third Party Site, not those of Oracle, will govern Client's use of the Third Party Site.
  - e. Oracle may run advertisements and promotions from third parties on the Service or may otherwise provide information about or links to third-party products or services. Client's dealings or correspondence with, or participation in promotions of, such third parties, and any terms, conditions, warranties or representations associated with such dealings or promotions, are solely between Client and such third party. Oracle is not responsible or liable for any loss or damage of any sort incurred by Client as the result of any Client's dealings with or reliance on any such third party advertising, promotions or information.
4. INTELLECTUAL PROPERTY
- a. The Service and DataFox Content, including, without limitation, any and all logos, designs, text, graphics, pictures, information, data, software, algorithms, sound files, other files, any selection and arrangement of any of the foregoing and anything else provided by the Service are the property of Oracle or its licensors and are protected by U.S. and international intellectual property laws. The copyrights of the look and feel of the Service and DataFox Content are the sole and exclusive property of Oracle. Client may not duplicate, copy, distribute or reuse any portion of the HTML/CSS or visual design elements of the Service or DataFox Content without the prior written consent of Oracle. Third Party Content is the property of its respective owners and licensors.
  - b. The DataFox and Oracle names, logos and slogans are trademarks of Oracle. Without the prior written permission from Oracle, Client may not: (i) copy, imitate or use, in whole or in part, any Oracle mark; or (ii) use any metatags or any other "hidden text" utilizing "DataFox", "Oracle" or any other name, trademark or product or service name of Oracle. The look and feel of the Service, including all page headers, custom graphics, button icons and scripts, is the service mark, trademark and/or trade dress of Oracle and may not be copied, imitated or used, in whole or in part, without Oracle's prior written

permission. Client may not remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Service. All other trademarks, product names and company names or logos mentioned by or appearing in the Service are the property of their respective owners. Reference in the Service to any third party products, services, processes or other information, by trade name, trademark, manufacturer, supplier or otherwise, does not constitute or imply endorsement, sponsorship or recommendation thereof by Oracle.

- c. Client retains all proprietary rights to (i) Client's data that may be input by Client, or otherwise provided to Oracle, while using the Service, (ii) Client materials created by Client or for Client by a third party using information provided by the Service, and (iii) content from Client's CRM system provided to Oracle (collectively, "**Client Content**"). Client hereby grants Oracle a non-exclusive, worldwide, royalty-free license to use Client Content in providing the Service to Client. Client Content does not include Client Contributions.
- d. "**Client Contributions**" shall mean corrections, updates, improvements, feedback, additions or other changes to the Service that Client may provide, at its discretion, to Oracle. Client hereby grants Oracle a non-exclusive, worldwide, perpetual, irrevocable, royalty-free license to use, copy, distribute, display, modify and make derivative works from (i) such Client Contributions and (ii) contact information and firmographic data included in Client Content (excluding Client-specific data).
- e. In accordance with the United States Digital Millennium Copyright Act, if Client or anyone else ("**Notice Giver**") accessing or using the Service believes that any material on the Service violates Notice Giver's intellectual property rights, Notice Giver should promptly send to Oracle America, Inc., 500 Oracle Parkway, Redwood Shores, CA 94065, Attention: General Counsel, Legal Department a written notice containing the following information: (i) a physical or electronic signature of the copyright owner or a person authorized to act on their behalf; (ii) identification of the copyrighted work claimed to have been infringed; (iii) identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit Oracle to locate the material; (iv) the Notice Giver's contact information, including address, telephone number, and an email address; (v) a statement that the Notice Giver has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and (vi) a statement that the information in the notification is accurate, and, under penalty of perjury, that Notice Giver is authorized to act on behalf of the copyright owner.

## 5. CONFIDENTIALITY

- a. "**Confidential Information**" means information disclosed by a party ("**Discloser**") to the other party ("**Recipient**") that is marked "Confidential," or that is confirmed in writing to be confidential within 10 days of oral disclosure, or that should reasonably be understood to be confidential. Oracle's Confidential Information includes the Service, DataFox Content and any business, product and service information not publicly known. Client Confidential Information includes Client Content and the platform login information about any Authorized User (e.g., username), but excludes Client Contributions. Confidential Information does not include any information that: (i) is or becomes publicly known through no fault of the Recipient; (ii) was known to the Recipient prior to disclosure by Discloser without violation of any confidentiality obligation to Discloser; (iii) is received by Recipient from a third party with no duty of confidentiality; or (iv) is independently developed by Recipient.
- b. Recipient will use the same degree of care to protect Discloser's Confidential Information that it uses to protect its own confidential information, but no less than reasonable care. Unless authorized by Discloser, Recipient shall only use Confidential Information as needed to perform or exercise its rights under these Terms of Service, and shall not

disclose any Confidential Information to any third party except to Recipient's personnel and subcontractors requiring the Confidential Information to perform or exercise Recipient's rights under this Agreement and who are bound by written confidentiality obligations with respect to the Confidential Information which are at least as restrictive as these Terms of Service. Recipient may disclose Confidential Information if compelled by law and directed to do so by a court of competent jurisdiction, but will promptly give Discloser notice of such compelled disclosure as permitted by law.

6. PAYMENT

- a. Fees are payable to Oracle within 30 days from the invoice date. Client will not be charged for a 30-day trial period for the Service starting from the date of the creation of Client's trial account. Charges will begin to accrue on the day after the 30-day trial period ends. Client payments shall be non-refundable, except as provided in these Terms of Service or Client's Order.
- b. Unless otherwise stated, Oracle's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). Client is responsible for paying all Taxes associated with Service purchases. If Oracle has the obligation to pay or collect Taxes for which Client is responsible, the appropriate amount shall be invoiced to and paid by Client, unless Client provides Oracle with a valid tax exemption certificate authorized by the appropriate taxing authority.

7. REPRESENTATIONS AND WARRANTY DISCLAIMERS

- a. Each party represents that it has the legal authority to enter into this Agreement and to abide by these Terms of Service.
- b. **EXCEPT AS PROVIDED IN THESE TERMS OF SERVICE, CLIENT'S USE OF THE SERVICE IS AT CLIENT'S SOLE RISK AND THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS.** Except as provided in these Terms of Service, Oracle does not represent or warrant that: (i) the Service will meet Client's specific requirements; (ii) the Service will be uninterrupted, timely, secure, or error-free; (iii) the results that may be obtained from the use of the Service will be accurate, timely or reliable; (iv) the quality of any products, services, information, or other material purchased or obtained by Client through the Service will meet Client expectations; or (v) any errors in the Service will be corrected. In particular, Oracle makes no representations or warranties of any kind with respect to any Third Party Content, Third Party Apps or Third Party Sites.
- c. **EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE EXTENT PERMITTED BY APPLICABLE LAW.**

8. LIMITATION OF LIABILITY

- a. **ORACLE'S TOTAL CUMULATIVE LIABILITY TO CLIENT FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY WILL BE LIMITED TO AND WILL NOT EXCEED AN AMOUNT EQUAL TO THE FEES PAID TO ORACLE BY CLIENT UNDER THIS AGREEMENT IN THE 12-MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO THE CLAIM.**
- b. **EACH PARTY EXPRESSLY ACKNOWLEDGES AND AGREES THAT NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

- c. The parties expressly acknowledge and agree that Oracle has set its fees and entered into the Agreement to provide the Service in reliance upon the limitations of liability specified herein, which allocate the risk between Client and Oracle and form a basis of the bargain between the parties.

#### 9. TERM AND TERMINATION

- a. Unless either party provides the other party with written notice of termination at least sixty (60) days prior to the Service end date specified in the Order (the “**End Date**”), the Service term will renew automatically and Client will be charged accordingly. Oracle reserves the right to modify the applicable charges and fees for the renewal term by giving Client written notice at least sixty (60) days prior to the Service End Date, in which case the Service term will renew automatically and Client will be charged accordingly unless Client provides Oracle with written notice by the later of (i) thirty (30) days from receipt of the Oracle notice or (ii) sixty (60) days prior to the Service End Date.
- b. Either party has the right to terminate the use of the Service, and the license rights provided hereunder if the other party breaches any provision of these Terms of Service, and the breaching party fails to cure the breach within thirty (30) days after receiving written notice of the breach.
- c. Oracle, in its sole discretion, has the right to suspend or terminate Client’s Service and refuse any and all current or future use of the Service, if it reasonably determines that Client’s (or its Authorized Users) actions, constitute a misuse of the Service, are causing harm to the Service or may cause material legal liability to Oracle, its licensors or other customers. In the event of such a suspension or termination, Client will be entitled to a refund of fees paid, pro-rated for the remainder of any Service term.
- d. Upon the Service End Date or any earlier termination of Client’s Service, Client will promptly (i) cease using the Service; and (ii) cease using and will expunge any DataFox Content on Client’s platform obtained from the Service as may be required by Oracle.
- e. The rights and obligations of the parties contained in Sections 2(h), 3(e), 4, 5, 7, 8, 9(d) and 10 will survive the termination of these Terms of Service or termination of Client’s use of the Service.

#### 10. GENERAL

- a. Client may not assign its rights and obligations under these Terms of Service, in whole or in part, by operation of law or otherwise, without Oracle’s express prior written consent (which consent shall not be unreasonably withheld, Any attempt to assign this Agreement, without such consent, will be null and of no effect. Subject to the foregoing, this Agreement will bind and inure to the benefit of each party’s successors and permitted assigns. Oracle may assign this Agreement without Customer’s consent.
- b. Upon forty-five (45) days written notice and no more than once every twelve (12) months, Oracle may audit Client’s compliance with these Terms of Service and Client’s Order(s). Client agrees to cooperate with such audit and to provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with Client’s normal business operations.
- c. These Terms of Service will be governed by and construed in accordance with the laws of the State of California excluding conflict of laws principles. The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in the Northern District of California and the parties hereby irrevocably consent to personal jurisdiction and venue therein.
- d. Except as expressly set forth in these Terms of Service, the exercise by either party of any of its remedies hereunder will be without prejudice to its other remedies under these Terms of Service or otherwise. The failure by either party to enforce any provision of these Terms of Service will not constitute a waiver of future enforcement of that or any other provision.

- e. If for any reason a court of competent jurisdiction finds any provision of these Terms of Service invalid or unenforceable, that provision will be enforced to the maximum extent permissible and the other provisions will remain in full force and effect.
- f. All notices required or permitted under these Terms of Service will be in writing and delivered by courier or overnight delivery services, by electronic mail, or by certified mail, and in each instance will be deemed given upon receipt. All communications will be sent to the addresses on file related to Client's account or to such other address as may be specified by either party to the other. Either party may change its address for notices under this Agreement by giving written notice to the other party.
- g. Neither party will be responsible for any failure or delay in its performance under these Terms of Service (except for any payment obligations) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, raw materials or supplies, war, terrorism, riot, acts of God or governmental action.
- h. The parties under these Terms of Service are independent contractors and these Terms of Service do not establish any relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.
- i. Client agrees to comply fully with all applicable export laws and regulations of the United States ("**Export Laws**") to ensure that neither the Service, nor any direct product thereof are: (i) exported or re-exported by Client directly or indirectly in violation of Export Laws; or (ii) used by Client for any purposes prohibited by the Export Laws, including but not limited to nuclear, chemical, or biological weapons proliferation.
- j. These Terms of Service, together with the Order and any other Oracle terms, conditions and policies, constitute the complete and exclusive understanding and agreement between the parties regarding its subject matter and supersedes all prior or contemporaneous agreements or understandings, written or oral, relating to its subject matter. The terms in any purchase order, procurement internet portal or other non-Oracle document shall not apply to the Service ordered. Any waiver, modification or amendment of any provision of these Terms of Service will be effective only if in writing and signed by duly authorized representatives of both parties.